

53-6-309 Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a dispatcher, if the dispatcher:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the dispatcher's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct that is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning based on *Garrity v. New Jersey*, 385 U.S. 493 (1967); or
 - (f) engages in sexual conduct while on duty.
- (2) The council may not suspend or revoke the certification of a dispatcher for a violation of the employing agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).
- (3)
 - (a) The division is responsible for investigating dispatchers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the dispatcher involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
 - (ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in violation of Subsection (1), the division shall present the findings and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the agency that employs the involved dispatcher of the investigation and shall provide any information or comments concerning the dispatcher received from that agency regarding the dispatcher to the council before a dispatcher's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.
- (4)
 - (a) The council shall review the findings of fact and conclusions of law and the information concerning the dispatcher provided by the dispatcher's employing agency and determine whether to suspend or revoke the dispatcher's certification.
 - (b) A council member shall recuse himself or herself from consideration of an issue that is before the council if the council member:
 - (i) has a personal bias for or against the dispatcher;

- (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
 - (iii) employs, supervises, or works for the same agency as the dispatcher whose case is before the council.
- (5)
 - (a) Termination of a dispatcher, whether voluntary or involuntary, does not preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher was terminated for any of the reasons under Subsection (1).
 - (b) Employment by another agency, or reinstatement of a dispatcher by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher was terminated for any of the reasons under Subsection (1).
- (6) An agency that is made aware of an allegation against a dispatcher employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Repealed and Re-enacted by Chapter 258, 2011 General Session